**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.15600 of 2016
Date of Decision: 19.01.2017**

Gurmit Kaur

......Petitioner

Vs

State of Punjab and another

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Ms. Rimplejeet Kaur, A.A.G., Punjab.

****

RAJ MOHAN SINGH, J.

[1]. Petitioner has sought jurisdiction of this Court under Section 482 read with Section 483 of Code of Criminal Procedure (for short 'Cr.P.C.) for quashing the supplementary challan submitted by the Investigating Agency in terms of Section 173(8) Cr.P.C., in a case bearing FIR No.222 dated 20.09.2007, registered at Police Station Patti, District Tarn Taran for the offences under Sections 406 and 420 of IPC.

[2]. Petitioner has also prayed that the impugned orders dated 11.02.2015 and 21.03.2015 passed by Sub Divisional Judicial Magistrate, Patti considering the case on charge on the

basis of supplementary challan without considering the report under Section 173(2) Cr.P.C., be quashed as it would run against the established legal position.

[3]. Brief facts are that an FIR No.222 dated 20.09.2007 was registered in the context of allegations of cheating on the pretext of sending abroad. Complainant Jaswinder Singh alleged that the petitioner along with her husband was involved in sending people abroad and petitioner was doing all the money dealing. The complainant was also trapped, when he talked to the accused for sending him to abroad in the year 2004 and the deal was finalized for Rs.6,10,000/-. The said amount was statedly paid to the accused in front of one Karamjit Singh and others. Petitioner promised to the complainant to send him to Spain after one month. However, the complainant was not sent to abroad and thereafter on the pressure being exerted, the petitioner returned an amount of Rs.3,00,000/- and also promised to return the remaining amount, which was not returned, rather threats were allegedly advanced by the petitioner.

[4]. On the aforesaid allegations, the FIR in question came to be registered. The Police investigated the case. During course of investigation, it was transpired that petitioner had no

role to play and she was falsely implicated. The investigation of the Police revealed that the complainant had given money to Agent namely Mohammad Ashraf in his house at village Sabhra and thereafter the Agent had done cheating by not sending the complainant abroad. Offence under Section 420, 406 IPC was found against the Agent Mohammad Ashraf. The said report of investigation was accepted by the Sr. Superintendent of Police, Tarn Taran

[5]. The aforesaid Mohammad Ashraf was sought to be arrested, but he could not be arrested and ultimately he was declared to be a proclaimed offender and necessary proceedings were initiated against him. No investigation was pending against the petitioner. Thereafter the Investigating Agency without there being any lawful order from the any competent Court proceeded to re-investigate the matter and presented a supplementary challan, whereby Mohammad Ashraf, who was declared a proclaimed offender on 25.08.2009 by the Magistrate was exonerated and the petitioner was nominated after about seven years of registration of the case.

[6]. Challan was presented against Mohammad Ashraf on 01.10.2009/15.10.2009. Aggrieved from the same, said accused filed a CRM-M No.36247 of 2011 before this Court and

anticipatory bail was granted to him. He was ordered to join the investigation of the case.

[7]. Mohammad Ashraf joined the investigation. It was during the said investigation, the statement of the complainant viz-a-viz. involvement of the petitioner was allegedly preferred by Investigating Agency in again nominating the petitioner as an accused. On the same allegations, earlier the Investigating Agency found the petitioner to be innocent and case was registered against Mohammad Ashraf.

[8]. After presentation of supplementary challan, the case remained pending for charge. Trial Court passed the order dated 11.02.2015 and it was observed that the case be adjourned for consideration of charge and the record of the case in respect of Mohammad Ashraf would be summoned only in case the same is required for framing of charge. Thereafter the trial Court passed the order dated 21.03.2015, chargesheeting the petitioner for the offence under Section 420 IPC.

[9]. The supplementary challan presented by the Investigating Agency under Section 173(8) Cr.P.C., as well as order dated 11.02.2015 adjourning the case for consideration of charge by observing that the case file of Mohammad Arshad

would be summoned only in case the same is required for framing of charge and also the order dated 21.03.2015 chargesheeting the petitioner has been assailed by the petitioner.

[10]. Learned counsel for the petitioner vehemently submitted that it is not a case of further investigation, rather Investigating Agency had the name of the petitioner in the FIR itself, thereafter they investigated the case and found the involvement of Mohammad Ashraf and petitioner was found innocent. Now under the garb of further investigation, the Investigating Agency has allegedly conducted the re-investigation on the same material available on record, which was earlier rejected by the Investigating Agency while finding the petitioner to be innocent. Now the Investigating Agency has gone back and reversed its own investigation and that is why it is not a case of further investigation, rather the Investigating Agency has done re-investigation, which is not permissible in law.

[11]. Learned counsel relied upon ***Vinay Tyagi vs. Irshad Ali @ Deepak and others, 2013(2) R.C.R. (Criminal) 197*** and contended that after filing of challan, it was obligatory on the part of trial Court to consider the first challan at the time of

framing charge against the petitioner.

[12]. At the time of hearing of this case on 03.11.2016, learned counsel for the petitioner undertook to serve respondent No.2 afresh for 23.11.2016. The office report indicated that respondent No.2 was evading service and a copy of the notice was affixed at the door of his residence. None appeared thereafter on behalf of the respondent. Finding no alternative, this Court has proceeded to hear the petitioner and the State counsel.

[13]. In ***Vinay Tyagi's*** case (supra) following conclusions were drawn by the Hon'ble Apex Court in respect of powers of a Magistrate in terms of Section 173(2) read with Section 173(8) Cr.P.C. For ready reference, the conclusions are reproduced as under:-

> *30. Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code :*
>
> *1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.*
>
> *2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms*

of Section 173(6) of the Code.

3. *The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh's case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.*

4. *Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).*

5. *The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.*

6. *It has been a procedure of proprietary that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet. This approach has been approved by this Court in a number of*

> *judgments. This as such would support the view that we are taking in the present case."*

[14]. Though there is no specific requirement under Section 173(8) Cr.P.C., to conduct further investigation or file supplementary report with the leave of the Court, the investigating agencies have not only understood, but also adopted it as a legal practice to seek permission of the Court to conduct further investigation and file supplementary report with the leave of the Court. The Courts in some of the decisions have also taken a similar view. The requirement of seeking prior leave of the Court to conduct further investigation and file a supplementary report will have to be read into and is a necessary implication of the provisions of Section 173(8) Cr.P.C. The doctrine of *contemporanea expositio* will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time and such practice that is supported by law should be accepted as part of the interpretative process.

[15]. In ***Vinay Tayagi's*** case (supra) the Hon'ble Apex Court Court further held that such a view can be supported from two different points. Firstly, though the doctrine of precedence as aforesaid, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so

understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of *contemporanea expositio*. Seeking such leave of the Court would also meet the ends of justice and also provide adequate safeguard against an accused.

[16]. The first and second report of investigation were available before the trial Court. The trial Court should have appreciated both the reports conjointly and should have the cumulative effect of reports and the material on record and should have applied its mind to determine whether prima facie case is made out to chargesheet the accused. In the event of finding the answer to be in negative, the trial Court should have proceeded in accordance with law in terms of Section 227 Cr.P.C.

[17]. From the record, it can be seen that the petitioner was nominated as an accused in the FIR on the basis of investigation done by the Investigating Agency. It was found that Mohammad Ashraf was the accused, who was ultimately declared to be a proclaimed offender. Petitioner was found innocent. It was thereafter that Mohammad Ashraf submitted to the jurisdiction of this Court. Anticipatory bail was granted by

directing him to join the investigation and he joined the investigation. On the same material, the police filed supplementary challan and reversed the culpability in terms of involvement of the petitioner by nominating her to be the accused in place of Mohammad Ashraf.

[18]. Since the Court allowed Mohammad Ashraf to join the investigation, therefore, legality and proprietary of the further investigation/re-investigation was on explanatory note. Even in the presence of two reports, the Court was under obligation to consider both, while passing the order.

[19]. In view of above, it can be appreciated that the Court acted differently at two places on the basis of same material on record. The Investigating Agency rejected the case *qua* the petitioner and thereafter under the garb of re-investigation, the same material was interpreted to nominate the petitioner. In such a situation, when two reports of investigation were available before the trial Court and even trial Court vide order dated 11.02.2015 had observed that on the consideration of charge, file of Mohammad Ashraf could be summoned. Even on 19.01.2015, trial Court passed an order in the following manner:-

"Present: APP for the State.

Accused on bail with counsel Sh. Gurmit

Singh Advocate.

Main file declaring accused Mohammad Asharaf as proclaimed offender not received. The Ahlmad is directed to make every personal efforts to bring the file from record room for 11.02.2015 so as to proceed further on the point of charge against accused Gurmit Kaur.

Sd/-
(Pritpal Singh)
SDJM/Patti/19-1-2015"

[20]. So, therefore, in the light of aforesaid facts, the trial Court ought to have considered both the reports for the purposes of consideration of charge. The veracity and genuineness of second report ought to have been considered by the trial Court in the light of ratio laid down in ***Vinay Tyagi's*** case (supra). At this stage, it would be just and proper to set aside the impugned orders and remand the case to the trial Court to revisit the material on record as observed in the preceding part of the order and pass fresh order on charge. The aforesaid course would also be just and appropriate as the replacing of accused would give new dimension to the case which is altogether different than the one on which previous challan was filed.

[21]. In view of aforesaid, impugned orders dated 11.02.2015 and 21.03.2015 are set aside. This petition is allowed in the light of aforesaid observations. The matter is remanded back to the trial Court. The trial Court would be at

liberty to appreciate the legality and genuineness of the second report under Section 173 Cr.P.C. in the light of observations of ***Vinay Tyagi's*** case (supra).

January 19, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No